



Re: Fw: Copy of NWP20 
Andy Smith to: Josie Clark
Cc: Earl Liverman, sghall

02/03/2012 05:55 PM

Earl,

I think NWP #20 would satisfy. In the end, there is no substantive difference. Michael's read of the regs is consistent with how I would read them.

Note that this new language for NWP #20 may be in effect by the time the summer rolls around and I think you would be covered. The current NWP #20 has you having to meet all three conditions which I think you can argue that you do in this case.

20. Response Operations for Oil and Hazardous Substances. Activities conducted in response to a discharge or release of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) including containment, cleanup, and mitigation efforts, provided that the activities are done under either: (1) The Spill Control and Countermeasure Plan required by 40 CFR 112.3; (2) the direction or oversight of the Federal on-scene coordinator designated by 40 CFR part 300; or (3) any approved existing state, regional or local contingency plan provided that the Regional Response Team (if one exists in the area) concurs with the proposed response efforts. This NWP also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761. This NWP also authorizes the use of temporary structures and fills in waters of the U.S. for spill response training exercises. (Sections 10 and 404)

We lost our window of opportunity to address a lot of this confusion and will have to wait until next go round in about 5 years. I've wondered the need for NWP #38, since we don't need a permit under CERCLA. I think this is aimed more at cleanups done outside of NCP (voluntary or under state oversight?) But we need NWP #20 because OPA does not exclude us from permits. NWP #38 seems oriented more towards CERCLA remedial sites. Removals seem to be neither fish nor fowl when deciding if they fit under NWP #20 for Response Operations and NWP #38 which is CERCLA cleanup.

I've suggested that when invoking NWP #20, let's use the RRT which has a COE representative. That COE Rep should then inform appropriate COE regulatory branch.

andy

Andrew M. Smith, P.E., CHMM
CAPT, US Public Health Service

Federal On-Scene Coordinator
Office of Environmental Cleanup
Emergency Response Unit

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Josie Clark

Well, there's an ending I didn't expect. What a h...

02/03/2012 02:46:09 PM

From: Josie Clark/R10/USEPA/US
To: Earl Liverman/R10/USEPA/US@EPA
Cc: sghall@ene.com, smith.andy@epa.gov
Date: 02/03/2012 02:46 PM
Subject: Re: Fw: Copy of NWP20

Well, there's an ending I didn't expect. What a helpful, knowledgeable government employee!

Earl Liverman

FYI

02/03/2012 01:54:06 PM

From: Earl Liverman/R10/USEPA/US
To: Josie Clark/R10/USEPA/US@EPA, smith.andy@epa.gov
Cc: sghall@ene.com
Date: 02/03/2012 01:54 PM
Subject: Fw: Copy of NWP20

FYI



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----- Forwarded by Earl Liverman/R10/USEPA/US on 02/03/2012 01:51 PM -----

From: "Burgan, Michael A NWW" <Michael.A.Burgan@usace.army.mil>
To: Earl Liverman/R10/USEPA/US@EPA
Date: 02/03/2012 01:47 PM
Subject: RE: Copy of NWP20

Earl,

Thanks for the description and maps. NWP20 would work if the project falls under the National Oil & Hazardous Substances Pollution Contingency Plan, and the rest of the requirements specified in NWP20 are met. But after reviewing the information you provided, NWP38 might be more applicable (copy attached). In fact, there is a note at the end of NWP38 that CERCLA projects approved by the EPA do not need to obtain permits under Section 404 or Section 10 of the Rivers and Harbors Act. I used it for a project in Wyoming where EPA/DEQ ordered clean up on a non-CERCLA site. As for your second question, NWP20 does not have a pre-construction notification requirement (submission of an application is not required). Nor is one required under NWP38 if this is a CERCLA clean up. If it is done outside of CERCLA, a PCN will be required. The only thing that makes the need for a PCN a big deal is the fact that the St. Joe is critical habitat for bull trout. So if we do end up verifying the project is authorized under either permit, we will have

to consult with the USF&WS under the ESA. But that is very doable. I'm sure you guy are consulting with them on your end anyway. Hopefully, if we had to consult, we'd be able to tag along on your consultation.

If you have any other questions, give me a call.

Mike Burgan
Environmental Resources Specialist
Coeur d'Alene Regulatory Office
(208) 765-8139

-----Original Message-----

From: Liverman.Earl@epamail.epa.gov [mailto:Liverman.Earl@epamail.epa.gov]
Sent: Monday, January 30, 2012 4:05 PM
To: Burgan, Michael A NWW
Subject: Re: Copy of NWP20

Thank you. The site that I'm involved with is referred to as the Avery Landing Site which is located adjacent to the St. Joe River downstream from Avery, ID. The site is a CERCLA/CWA site that will be addressed this summer as an EPA-lead activity. I'm interested in the NWP20 because we will likely have to remove and reconstruct an estimated 200 to 300 foot segment of the St Joe River where oil and other hazardous substances have breached a liner and are discharging to the St. Joe River. Its my understanding that all I have to do regarding coordination with the USACE is to make sure we work within the context of the Northwest Area Contingency Plan. Does this sound correct to you? Again, thanks.

Attached are a few figures which you may find helpful. Figure 1-2 shows the site location, Figure 2-3 shows the current site ownership (Federal Highwau Administration, Potlatch, and Bentcik), Figure 2-5 shows the historical railroad features, and Figures 4-1 and 4-2 shows the site features.

(See attached file: Figure 1-2 Site Vicinity Map.pdf) (See attached file: FIG 2-3.pdf) (See attached file: Fig 2-5.pdf) (See attached file: Fig 4-1.pdf) (See attached file: Fig 4-2.pdf) (Embedded image moved to file: pic20671.jpg)

From: "Burgan, Michael A NWW" <Michael.A.Burgan@usace.army.mil>
To: Earl Liverman/R10/USEPA/US@EPA
Date: 01/30/2012 03:54 PM
Subject: Copy of NWP20

Good afternoon Earl,

Here is a copy of the current NWP20. Be advised it, and all current NWPs, expire on March 18, 2012. We used to have a public notice on our website where you could review the proposed NWPs, but that has apparently been removed. The new finalized NWPs will hopefully be published in the federal register before or near February 18, 2012. They should become , effective 30-days after their final publication in the federal register.

However, if an individual or party submits a pre-construction notification (PCN - aka permit application), and we can verify their project is authorized under one of the existing NWP's prior to March 18, 2012, they will have until March 18, 2013, to complete the project. If work cannot be completed by then, they will have to submit another PCN under the new NWP.

If you have any questions, give me a call.

Mike Burgan
Environmental Resources Specialist
Coeur d'Alene Regulatory Office
(208) 765-8139

[attachment "NATIONWIDE PERMIT 20.pdf" deleted by Earl Liverman/R10/USEPA/US]

[attachment "NATIONWIDE PERMIT 38.pdf" deleted by Josie Clark/R10/USEPA/US]